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High court rejects Kemper Freeman's attempt to stop I-90 light rail

Sound Transit gets a green light to build light-rail tracks on the I-90 floating bridge, after longtime opponent Kemper Freeman loses a Supreme Court case.

By [Mike Lindblom](#)

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Kemper Freeman Jr.'s court fight against Sound Transit has apparently reached the end of the line.

The state Supreme Court on Thursday [rejected his lawsuit](#) to keep light-rail trains off Interstate 90. Justices said high-capacity transit fits the original vision of local and federal governments, in agreements dating to 1976.

The 7-2 decision is a green light to build the \$2.8 billion East Link route, which, when finished in 2023, will connect Seattle, Mercer Island, Bellevue and the Overlake area of Redmond.

Trains will travel in what are now the center express lanes of the I-90 floating bridge, displacing buses and carpools into new high-occupancy-vehicle lanes, which are being added to the outer roadways.

This is the second high-court loss for Freeman, the developer of Bellevue Square and surrounding hotel and retail buildings, who has been a longtime advocate for motorists. His transportation adviser, Bruce Nurse, said no further lawsuits have been discussed, and he seriously doubts there will be any.

"We're getting somewhat battle-fatigued from fighting the government," Nurse said.

Bellevue City Councilmember Claudia Balducci, who sits on the Sound Transit board, said residents' views have always been divided on light rail — but in the past couple of years, even the skeptics tell her they're tired of skirmishes and just want the line to be built. Within Bellevue, 58 percent of voters in 2008 supported a regional sales-tax increase to fund suburban rail extensions.

Earlier this year, the city government endorsed a track alignment that includes a shallow downtown tunnel, while settling a prolonged argument over how trains will pass residential Surrey Downs south of downtown.

“It’s time to get this project built and give riders a congestion-free transit option across Lake Washington,” Balducci said.

Freeman and his supporters in the Eastside Transportation Association argued that I-90 must be reserved for motor vehicles, because it was funded by gas taxes. The 18th Amendment to the state constitution limits gas-tax income to roads and highways.

But Chief Justice Barbara Madsen, writing for the majority, found that the conversion to rail doesn’t violate the state constitution, because Sound Transit will reimburse the state motor-vehicle fund.

That’s true in one sense, debatable in another.

Sound Transit expects to pay the state \$173 million to cover most of the costs to build the new HOV lane. But that’s all Sound Transit will pay for the use of the bridge, under a 40-year lease.

Sound Transit is getting credit for the \$173 million, while the appraised value to the state of the center lanes is only \$140 million or so, explains transit spokesman Geoff Patrick. (The state paid only 14.2 percent of the costs to build I-90, reducing Sound Transit’s burden to compensate the Washington State Department of Transportation.)

A point that swayed the majority was that the Federal Highway Administration, which paid most of the I-90 construction cost, supports the rail conversion.

In 1978, a federal document said that “public transportation will permanently have first priority in the use of the center lanes,” Sound Transit pointed out.

In a dissent, Justice James Johnson said the lease arrangement makes no sense — no ordinary tenant would gain a rent discount for doing property work (replacing carpool lanes) that provides no net gain to the landlord (the state DOT).

He wrote that the majority eroded the constitution’s protection of the motor-vehicle fund for highway purposes, by placing it “at risk of legislative and administrative pilfering.”

Johnson echoed Freeman’s case by ridiculing a state argument that I-90 center lanes will soon become surplus, with the advent of new carpool lanes on the mainline.

“In fact, it is difficult to imagine any property in the entire state of Washington that is needed for highway purposes more than the two center lanes of the I-90 bridge during any daily rush hours,” he wrote.

A number of surveys and measurements suggest that “peak driving” has reached the Northwest, where miles traveled have remained at or near level the past few years. Some elected officials and countless environmentalists have advocated weaning society off the car, to reduce global warming or make city living more pleasant.

Nurse predicts the need for road capacity will only increase with population, and there could even be a revival as self-driving cars are developed.

“We’re talking about a free society that wants to go where they want to go, when they want to go, and with whom they want to go,” he said.

Sound Transit says that when East Link is finished, riders will be able to travel between Seattle and Bellevue in 20 minutes, compared with 45 minutes in a car in traffic. An estimated 50,000 people will use the East line by 2030, the agency predicts.

In 2008, voters in the three-county Sound Transit district approved a sales-tax increase to expand the regional light-rail system, which currently runs only between downtown Seattle and Seattle-Tacoma International Airport. Trains will reach the University of Washington and Angle Lake in SeaTac by 2016, while extensions in the early 2020s will reach Northgate and Lynnwood.

Seattle Times staff reporter Keith Ervin contributed to this report.

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